IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 1397 of 1997

Between:

1 Mohammed Khaja S/o Sriu Mohammed Shamsuddin, aged about 54 years, R/o Bhavani Nagar , Hyderabad.
2 Smt. Naseem Begum W/o Sri Mohd. Khaja, aged about 36 years, R/o Bhavani Nagar , Hyderabad.

..... PETITIONERS

AND

1 Govt. of A.P rep by Secretary
Revenue Department , Secretariat Building, Secretariat, Saifabad , Hyderabad.
2 District Collector Hyderabad Dist. Hyderabad.
3 A.P State Wakf Board rep. by its Secretary, having its Office at Razakh Manzil, Opp: Public Gardens , Nampally , Hyderabad.
4 Mandal Revenue Officer Bahadurpura Mandal , Attapur , Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the proceedings II/ 6687/95 dt 25-1-97 passed by the 1st respondent as illegal, arbitrary and unjust by issuing appropriate writ, order or direction and pass such other order or orders as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.M.V.S.SURESH KUMAR, Advocate

Counsel for the Respondents 1, 2 and 4: GP FOR REVENUE

Counsel for Respondent No.3: Mr.A.M.Qureshi

The Court made the following O R D ER:

This writ petition is filed by the petitioners aggrieved by the proceedings of the second respondent dated 25-01-1997, under which the second respondent directed the Mandal Revenue Officer, Bahadurpura Mandal, Attapur, Hyderabad-the fourth respondent for demolition and removal of the alleged illegal structures said to have been raised in Sy.No.259/1, Mir Alam Tank, Idgah, Hyderabad, as according to the second respondent, the same belongs to the Wakf Board.

2. According to the petitioners, they purchased the property bearing No.19-4-274/2/A, ad measuring 603 square yards, situated at Mir Alam Tank, Idgah, Hyderabad, under a registered sale deed, dated 13-08-1990 from one Ali Raza Zabit. It is further stated that after the said purchase, the petitioners have constructed a shed of two rooms after obtaining permission from the Municipal Corporation of Hyderabad, vide permit No.299/100, dated 14-11-1990. It is also stated that subsequently, petitioners have established a small-scale unit in the name of Khaja Welding Works. It is stated that the petitioners have also been paying non-agricultural tax to the Revenue Department. While so, the impugned proceedings have been issued by the second respondent, even though there is no evidence showing that the property belongs to the Wakf Board. In the affidavit, it is also stated that the respondents did not issue any notice before passing the impugned order by the second respondent, therefore, on merits as well as for violation of principles of natural justice, the impugned order is liable to be quashed.

3. A counter has been filed on behalf of the Wakf Board- third respondent claiming that this property is part of Wakf Board's property

and also stated that the land in an extent of 41,003 sq.yds bearing Survey Nos.259/1 to 259/5 in Ward No.19, Block No.4, situated at Attapur village is under the 'towaliath' of the Wakf Board. It is also stated that it was notified in the A.P. gazette as per the report of the Commissioner of Wakf under Section 5(2) of the Wakf Act, 1954, in the year 1966. It is also stated that civil suits were filed when Municipality has issued notice of illegal construction under Sections 452 and 461 of the A.P.Municipal Corporations Act, and the petitioners obtained order of status quo and the said status quo order was vacated as the suits were dismissed for default.

4. At the time of hearing, learned counsel for the petitioners has stated that he is having the gazette copies of various years, where under the properties were notified, and there is no gazette copy as referred to by the respondents in their counter.

5. Learned counsel for the first respondent was also directed to produce the gazette copy and the learned counsel had expressed his inability to obtain any gazette copy to satisfy this Court that Sy.No.259/1, Ward No.19, Block No.4, Mir Alam, Idgah, Attapur, was notified as Wakf property.

6. Learned counsel for the petitioners contended that in the absence of any gazette notification notifying the property as Wakf property, the first respondent has no right to initiate any proceedings or to support the proceedings of the second respondent. Alternatively, the learned counsel also contended that even if it is assumed that it is a Wakf property, the second respondent is not a competent authority either to issue instructions for removal of any structures or for taking possession, therefore, the proceedings dated 25-01-1997 are clearly illegal and without jurisdiction.

7. Heard both sides and considered the material on record.

8. As no material evidence is placed before this Court showing that

the land in Sy.No.259/1, Mir Alam Tank, Idgah, Hyderabad, was notified as Wakf property and belongs to the Wakf Board, the proceedings issued by the second respondent, dated 25-01-1997 are clearly illegal and without jurisdiction. Apart from that, in spite of number of opportunities having been given to the respondents, they are unable to place any material before this Court. However, at the time of hearing, learned counsel for the respondents contended that the land in the above survey number was divided and they are also covered by 'munthaka', but as long as, no evidence is placed before this Court, it is not open to the respondents to plead that this property is part of Wakf Board's property.

9. Under the above circumstances, the impugned proceedings dated 25-01-1997 of the second respondent are set aside both on merit as well as in jurisdiction.

10. The writ petition is accordingly allowed. No order as to costs.

_____

24-06-2004

vrn

To

1 The Secretary, Govt. of A.P, Revenue Department , Secretariat Building, Secretariat, Saifabad , Hyderabad.
2 The District Collector Hyderabad Dist. Hyderabad.
3 The Secretary, A.P State Wakf Board, at Razakh Manzil, Opp: Public Gardens, Nampally , Hyderabad.
4 The Mandal Revenue Officer Bahadurpura Mandal , Attapur , Hyderabad.
5. Two C.Cs to Government Pleader for Revenue, High Court Buildings, A.P. Hyderabd (OUT)
6. Two C.D. copies.